

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Bell Operating Company) CC Docket No. 96-21
Provision of Out-of-Region)
Interstate, Interexchange Services)

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**COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (ALTS), pursuant to the Commission's Notice of Proposed Rulemaking in this proceeding released on February 14, 1996, and Public Notice 61588, hereby submits its initial comments in this proceeding.

I. ALTS'S INTEREST IN THIS PROCEEDING

ALTS is the non-profit national trade organization representing competitive providers of local telecommunications services. ALTS' membership includes over thirty non-dominant providers of competitive access and local exchange services that deploy innovative technologies in many metropolitan and suburban areas across the country.

As competitive providers of local exchange services, the members of ALTS have a vital interest that all regulations implementing the Telecommunications Act of 1996 be accomplished in fair and competitively neutral basis.

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II. PROCEDURAL MATTERS

As a procedural matter, ALTS notes the Commission commenced this rulemaking within a week after enactment of the Telecommunications Act. In the Fifth Report and Order in the Competitive Carrier Rulemaking¹ the Commission noted that at the time the BOCs were barred by the MFJ from providing interLATA services and noted that if the bar were lifted in the future the Commission "would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation."²

ALTS is aware the Act allows the BOCs to provide out-of-region interstate, interexchange services upon enactment. Nevertheless, the issue of whether the RBOCs ought to be eligible for streamlined regulation under any conditions need not have been decided immediately. The basic thrust of the Title II portions of the '96 Act is the creation of full and fair competition in the local exchange markets. The Commission's resources and energies at this time are best employed in implementing the pro-competitive provisions of Sections 251 and 252 rather than initiating this proceeding.

There appears to confusion about the Commission's

¹ 98 F.C.C.2d 1191 (1984).

² Id. at 1198-99 n.23

institutional priorities if, at a time when the Act seeks to put pressure on the BOCs to provide full and nondiscriminatory interconnection for the provision of local service, the Commission immediately begins a proceeding "seeking to facilitate timely entry by the BOCs into the provision of out-of-region interstate, interexchange services." Notice at 6.

Nor is there any showing that the BOCs suffer an appreciable burden from continuing as dominant carriers until such time as the Commission can address this issue under less demanding circumstances. The burden of being regulated as a dominant interexchange carrier is relatively insignificant for the companies. The BOCs have a great deal of experience in filing tariffs and related materials,³ and a requirement that they do so in these new service areas, at least during implementation of the '96 Act, would not be overly burdensome. The rush to relieve the RBOCs of paperwork they deem unnecessary is particularly frustrating given that competitive carriers have now waited since 1987 for final expanded interconnection tariffs to become effective -- and are still waiting.

Perhaps unintentionally, the proposal thus conveys the message that the administrative convenience of the RBOCs, hardly companies that cannot look out for themselves, is just as important, as implementing the pro-competitive provisions of the

³ For all other services, the BOCs are treated as dominant carriers and regulated accordingly.

Act.

III. SUBSTANTIVE MATTERS

With respect to the substantive issues raised in the NPRM ALTS has several concerns. In this proceeding, the Commission seeks to determine under what circumstances the RBOCs could be allowed to provide out-of-region interstate, interexchange service under the streamlined regulatory regime applicable to nondominant carriers. The Notice of Proposed Rulemaking suggests that if certain limited, separate subsidiary requirements are satisfied, the BOC subsidiary ought to be regulated as a nondominant carrier.

However, the separation requirements suggested in the NPRM are insufficient to protect either competitors or consumers from anticompetitive practices. The separation proposed by the Commission addresses, for example, legal and accounting separation, but not separation of marketing of local and out-of-region services.

Many of BOCs are currently providing cellular services out-of-region.⁴ At least with respect to those customers, the BOCs clearly have an existing relationship and may, in fact, exercise considerable market power if they are allowed to jointly market

⁴ See the highly integrated cellular operations of NYNEX and Bell Atlantic, for example (often rumored to be merging), and the many situations in which the RBOCs partner in cellular provisioning and marketing.

those services. In addition, the BOCs presumably initially will target large companies with whom they may have existing relationships in their region. Joint marketing to those customers would result in the BOCs gaining an unfair advantage vis a vis its competitors in both the local and interexchange arenas.

The NPRM's analysis also fails to recognize the emergence of close coordination between some RBOCs. In particular, it is clear that the close relationship between Bell Atlantic and NYNEX in the cellular field, one that creates a seamless region-to-region service in the perception of customers, has resulted in a blurring of the out-of-region definition.

While ALTS believes that it is premature for the Commission to adopt any streamlined rules at this time, if the Commission does adopt such rules, it needs to recognize situations like those in the NYNEX and Bell Atlantic regions, and make appropriate provisions for those circumstances. The Commission should consider dominant carrier status for BOCs in any area where the BOC has a joint venture or an equity interest in the incumbent local exchange carrier.

Should the Commission decide to adopt the streamlined rules at this time, it also needs to make it clear that any BOC contracts for non-communications services with another incumbent local exchange carrier for the provision of out-of-region service must be made public. The Telecommunications Act of 1996 mandates

that any interconnection or similar agreement between incumbent local exchange carriers must be filed with the State commissions for approval. In order that the BOCs not gain unfair advantage in other areas, however, such as the rental of office space or the purchase of non-communications related goods or services it is important that all agreements, whether technically falling under Section 252 requirements or not, be open for public inspection to ensure that unfair, discriminatory agreements are not entered into by the various BOCs.

CONCLUSION

This NPRM is clearly premature. And, even more important, the NPRM has not articulated sufficient reason why the BOCs need relief from the regulatory oversight that would otherwise be required of their provision of out-of-region interstate interexchange service. Should the Commission adopt such rules, however it should must make sure that the rules: 1) are broadened to include separate marketing requirements, 2) recognize the close working relationships between various BOCs and limit the

instances in which nondominant regulation would apply, and 3) require that all contracts between BOCs and ILECs out of their region be subject to public scrutiny.

Respectfully submitted,

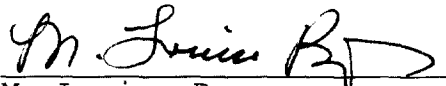
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served March 13, 1996, on the following persons by hand service, as indicated.


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